

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TRANSCRIPT OF VIOLATION OF SUPERVISED RELEASE HEARING
BEFORE THE HONORABLE EDUARDO C. ROBRENO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: ARLENE D. FISK, ESQUIRE
Assistant United States Attorney
United States Attorney's Office
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106

For the Defendants: PAUL J. HETZNECKER, ESQUIRE
1420 Walnut Street
Suite 911
Philadelphia, PA 19106

Probation Officer: KENNETH BERGMANN
United States Probation Office
Suite 2400
600 Arch Street
Philadelphia, PA 19106

Transcribers Limited
17 Rickland Drive
Sewell, NJ 08080
856-589-6100 • 856-589-9005

2

1 Audio Operator: Joseph Matkowski

2 Transcribed By: Jeff Nathanson

3 - - -

4 Proceedings recorded by electronic sound
5 recording, transcript produced by computer-aided
transcription service.

6 - - -

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

3 THE COURT: Good morning. Please be seated.

4 MS. FISK: Good morning, Your Honor.

5 MR. HETZNECKER: Good morning, Your Honor.

6 THE COURT: So, we are here today on a
7 violation of supervised release. So, Ms. Fisk, what is
8 the status of the matter?

9 MS. FISK: Your Honor, the government is
10 ready to proceed. With permission of the Court,
11 defense counsel has agreed to an initial proffer of the
12 evidence made by the government, and I have Mr.
13 Bergmann available for cross-examination by defense
14 counsel to clarify any issues that the defense has.

15 THE COURT: What is the defendant's position
16 as to the violations?

17 MR. HETZNECKER: Your Honor, some of these
18 violations were are conceding, and we will concede
19 them.

20 THE COURT: Okay.

21 MR. HETZNECKER: Others I challenge, and I
22 would like to cross-examine, based on the government's
23 proffer.

24 THE COURT: Which ones are you conceding?

25 MR. HETZNECKER: Well, I' conceding number

1 one, condition number one.

2 THE COURT: Okay. Let's see.

3 MS. FISK: Your Honor, there is some just
4 additional information that I would like the Court to
5 have with regard to condition number one, and the
6 manner in which that evidence was obtained.

7 THE COURT: Well, he's conceding it.

8 MS. FISK: I understand that, but in terms of
9 the defendant's adjustment to supervised release --

10 THE COURT: Okay. Well, you can argue that
11 later.

12 MS. FISK: It's in the way of evidence, Your
13 Honor, as opposed to argument.

14 THE COURT: It's conceded.

15 MS. FISK: Very well, Judge.

16 THE COURT: Okay. Now, number two?

17 MR. HETZNECKER: Number two, where it says
18 "Standard condition number three," that's what I have
19 on my notice sheet, Your Honor.

20 THE COURT: Well, the second one is "He shall
21 answer truthfully all inquiries by the probation
22 office", and on February 23rd a scheduled visit, he had
23 a BMW car key, et cetera.

24 MR. HETZNECKER: Right.

25 THE COURT: What's your position on that?

1 MR. HETZNECKER: We have information about
2 the BMW. With respect to whether or not my client
3 provided truthful information at the time, obviously I
4 was not present, so I can't really contest that part
5 of it, but I do have information about the vehicle
6 today.

7 So, to the extent that we have the
8 information today, whether he was in compliance then or
9 not, you know, obviously, if the probation officer
10 says that he said certain things, I certainly can
11 cross-examine him about that, but I think what's more
12 important at issue is whether or not he has the
13 information regarding the car today, and he does.

14 THE COURT: He had what?

15 MR. HETZNECKER: Whether he has the
16 information regarding the vehicle, and he has that
17 information today.

18 THE COURT: Okay. How about number three?

19 MR. HETZNECKER: Number three, which is --

20 THE COURT: Eleven recorded conversation with
21 Aaron Jones.

22 MR. HETZNECKER: Yes, Your Honor. We're
23 conceding that. However, I would point out, and I
24 think this is important to look at the sequence of
25 events, the probation officer obtains the records of

1 the recorded conversations in July. There then is a
2 conversation in August between him and my client
3 regarding conversations with Aaron Jones.

4 I think the government will concede there
5 were no conversations with Aaron Jones following May of
6 2009. So, to the extent that Mr. Bergmann obtained the
7 recorded conversations in July, and then had that
8 subsequent conversation with my client on August 26th,
9 yes, we concede that prior to that there were recorded
10 conversations with Aaron Jones.

11 THE COURT: But, the point is was he
12 associating with persons who have been convicted of
13 felonies without permission of the probation officer?
14 I mean, is there any question possibly about it? He
15 had eleven conversations with a convicted felon.

16 MR. HETZNECKER: Correct, and we're not
17 disputing that. May I have one moment with my client,
18 Your Honor?

19 THE COURT: Yes.

20 MS. FISK: Your Honor, there were an
21 additional twenty-six phone calls, as noted in the
22 final paragraph of that violation, with additional
23 felons, between the period of July 15th, 2009, up and
24 through January 17th of 2010, twenty-six phone calls to
25 additional state inmates. Those records have also been

1 obtained, and the defendant's having conversations with
2 those individuals, as well.

3 THE COURT: Okay. So, that's really it,
4 that's admitted. Now, how about --

5 MR. HETZNECKER: But, Your Honor --

6 THE COURT: Yes?

7 MR. HETZNECKER: I would like to
8 cross-examine Mr. Bergmann regarding those
9 conversations and the sequence of events, because I
10 think it's significant for this Court to know what, in
11 fact, was known prior to that date, and following the
12 conversations with Mr. Bergmann, what happened with
13 respect to those conversations. I think it's important
14 for the Court to know that.

15 THE COURT: Okay.

16 MR. HETZNECKER: The probation office was
17 aware of this, they had been aware of this.

18 THE COURT: Right, so what?

19 MR. HETZNECKER: Well, I think it's important
20 for the Court to know, that's all.

21 THE COURT: Okay. I'll accept that. They
22 were aware of it, so what?

23 MR. HETZNECKER: I guess that's my point, so
24 what?

25 THE COURT: Okay, so what's the point?

1 MR. HETZNECKER: My point is that I think he
2 didn't violate them then, he didn't violate them on
3 August 26th, when he was aware of it. There was no
4 violation filed at that point. He's been on supervised
5 release for five years. So, at that point, Mr.
6 Bergmann did not violate him.

7 THE COURT: Because the probation officer was
8 aware of it?

9 MR. HETZNECKER: For whatever reason, he
10 exercised his discretion not to violate him at that
11 time. My client admitted those conversations, from
12 what I understand.

13 THE COURT: Right. So, you mean if he waived
14 the right to violate him, is that it?

15 MR. HETZNECKER: No, no, in terms of
16 mitigation, I'm not contesting that there was a
17 violation.

18 THE COURT: Okay.

19 MR. HETZNECKER: But, in terms of
20 mitigation --

21 THE COURT: Okay. Well, we'll get to
22 mitigation.

23 MR. HETZNECKER: All right. That's fine.
24 That's fine.

25 THE COURT: We'll get to mitigation. Now,

1 let's see. If we go by in the order, let's just be
2 sure that we do it and we go in the order in which we
3 have here. That was A, then we did B, then we did C,
4 that's association with criminal activity, we've done
5 that, then, we'll do D.

6 MR. HETZNECKER: Not criminal activity, Your
7 Honor, association with known felons.

8 THE COURT: With any person convicted of a
9 felony.

10 MR. HETZNECKER: Right.

11 THE COURT: Yes, okay.

12 MR. HETZNECKER: There's no allegation of
13 criminal activity.

14 THE COURT: Right, exactly. D, "The
15 defendant shall not associate with any person engaged
16 in criminal activity." Now, that's something different
17 than C. C is --

18 MR. HETZNECKER: We're contesting that.

19 THE COURT: -- a convicted felon, D is a
20 person engaged in criminal activity.

21 MR. HETZNECKER: No, we are contesting that.

22 THE COURT: Okay. So, we will put that
23 aside. Now, E, "The defendant shall notify the
24 probation officer within seventy-two hours from being
25 arrested."

1 MR. HETZNECKER: Your Honor, he wasn't
2 arrested.

3 MS. FISK: Or questioned.

4 MR. HETZNECKER: It was a questioning.

5 THE COURT: Questioned by a law enforcement
6 officer. Now, I thought there was some decision by the
7 Third Circuit on that, on the issue of questioning,
8 whether that was too broad. Anybody familiar with that
9 decision by the Third Circuit?

10 MS. FISK: I am not, Your Honor.

11 MR. HETZNECKER: I am not, Your Honor.

12 THE COURT: Okay. Would you check that out?
13 I think that Judge Sloviter said that that condition in
14 our standard conditions was too broad to be enforced.
15 So, I think if we check that out, maybe we have to toss
16 this out.

17 MS. FISK: Okay.

18 MR. HETZNECKER: I appreciate that, Your
19 Honor.

20 THE COURT: Yes. Okay. Yes, sir.

21 MR. BERGMANN: Your Honor, if I may? It's my
22 understanding that what Your Honor is speaking to is
23 questioned about criminal activity.

24 THE COURT: Right.

25 MR. BERGMANN: Mr. Williams was questioned

1 about a stabbing that had taken place at this party.

2 THE COURT: Okay. Why don't we look at the
3 opinion?

4 MR. BERGMANN: As a witness, Your Honor, as a
5 witness.

6 THE COURT: Let's look at the opinion and
7 make sure that we are within the parameters of what it
8 said. I think it was Judge Sloviter who wrote the
9 opinion, so we'll check that out in a minute.

10 Okay. So, let's see what we have here. We
11 have then standard condition number one. I think that
12 was admitted.

13 (Pause in proceedings.)

14 THE COURT: Okay. Let's go by the letters, I
15 guess. A was admitted. Now, B, that was not admitted.
16 Okay. C, that was admitted. Okay. D, not admitted,
17 and E is in question. So, we have two of them that
18 have been admitted. Is that right, Mr. Hetznecker?

19 MR. HETZNECKER: Yes, Your Honor, that is
20 correct, we admit those two.

21 THE COURT: Okay. Fine.

22 MR. HETZNECKER: With respect to B, again, I
23 would just like an opportunity just to question the
24 probation officer --

25 THE COURT: Okay.

1 MR. HETZNECKER: -- because we're not -- I'm
2 not necessarily --

3 THE COURT: You are not conceding it, you are
4 contesting it, yes, I understand that.

5 MR. HETZNECKER: Well, I'm contesting in the
6 sense that if he did not provide the information, and
7 that was what was said to the officer, then I will
8 concede that part of it.

9 THE COURT: Right.

10 MR. HETZNECKER: But, we do have the
11 information today.

12 THE COURT: Okay. Fine. So, why don't we do
13 this? Now, as to B and D, Ms. Fisk, why don't you go
14 forward with those two?

15 MS. FISK: Certainly, Your Honor. Your
16 Honor, with regard to B, the condition being to follow
17 the instructions of the probation officer. On that
18 date, after it appeared to the probation officer that
19 the defendant was attempting to hide car keys that he
20 brought into probation with him by keeping them
21 secreted in his glove, he went through the
22 magnetometer, it kept going off.

23 He then took off his gloves, put them on the
24 side, walked through, there was no metal detector
25 reaction, and it was only after Mr. Bergmann wanded the

1 gloves and found the keys hidden in the gloves that the
2 defendant provided a statement that he was driving a
3 car he had not previously given information about.

4 Mr. Bergmann, at that time, directed the
5 defendant to provide him with all the information
6 regarding that car, and from that date, on February
7 23rd, to today's date, April the 7th, the defendant has
8 failed to comply with that instruction of the probation
9 officer.

10 No additional information has been
11 forthcoming, and that is despite the fact that there
12 have been, as I understand it, additional contacts
13 between Mr. Bergmann and the defendant since that time.

14 So, with regard to his failure to follow the
15 instructions of the probation officer to provide the
16 information, the defendant has failed to comply.

17 THE COURT: Okay. So, we are talking about
18 the second paragraph, specifically, "The defendant was
19 instructed to provide the officer with a license plate
20 number," and he hasn't provided that information.

21 MS. FISK: That's correct.

22 THE COURT: Okay.

23 MS. FISK: No further information has been
24 forthcoming.

25 THE COURT: Okay. Let's see. How about as

1 to D?

2 MS. FISK: With regard to D, Your Honor, Mr.
3 Bergmann received photographs, as is referenced in one
4 of the admitted sections, I believe it's the leaving
5 the state violation. I believe it's -- well, actually,
6 it's -- well, in any event, Mr. Bergmann was provided
7 photographs -- oh, in condition -- violation A, which
8 has been admitted, of the defendant at a party in
9 Delaware, in the summer of 2008.

10 The defendant -- and ultimately, Mr. Bergmann
11 was able to confirm by a police report filled out from
12 a stabbing that occurred at that party in the summer of
13 2008, that the defendant was, indeed, there. He also
14 heard the defendant talking about that party in
15 Delaware in some of the phone conversations that are
16 referenced.

17 In one of photographs, and I would mark it as
18 Government Exhibit 1 for purposes of this hearing --

19 MR. HETZNECKER: Can I see it?

20 MS. FISK: Certainly, a copy has just been
21 given to you in the discovery.

22 MR. HETZNECKER: All right. Let me look at
23 it right now.

24 MS. FISK: Okay. In this photograph, Your
25 Honor, and Mr. Bergmann would so testify, Mr. Bergmann

1 knows all three men, as I understand it, in that
2 photograph.

3 The gentleman in the center is this
4 defendant. The gentleman standing, as you're looking
5 at the photograph, to the right, is another federal
6 convicted felon on supervised release by the name of
7 Alshana Mews (ph). They were I would note on
8 supervised release at the same time.

9 The government has no other information
10 linking the defendant to Mr. Mews, and can offer no
11 further information showing prior contacts with each
12 other.

13 I would note that the third individual in
14 that photograph has been killed, or has since deceased.
15 I believe he was murdered, and is not a subject of this
16 inquiry.

17 But, Alshana Mews is, indeed, and was in the
18 summer of 2008, a federal felon, as was this defendant.
19 The nature of the photograph, frankly, is an indication
20 that it appears, and that is all that the government
21 can say, they knew each other.

22 When the defendant was shown that photograph
23 by Mr. Bergmann on March 9th of 2010, he was first
24 asked if he knew Mr. Mews. The defendant said he
25 didn't know him.

1 The defendant was also asked on that same
2 occasion, where was this party, and the defendant said
3 it was a splash party for his friend who was going into
4 the NFL, and that the party was in Philadelphia.

5 Mr. Bergmann asked the defendant specifically
6 if the party was in Delaware. The defendant said it
7 was not, and then said "Get off your butt and find out
8 yourself," and "I do not talk to law enforcement."

9 It was in response to that offer by the
10 defendant that Mr. Bergmann then went to Delaware and
11 was able to obtain the police report, which showed
12 that, indeed, the defendant was interviewed as a
13 witness on that same day that that photograph was
14 taken, because there was a stabbing at that pool party.

15 But, with regard to the defendant's
16 consorting with other felons, that photograph, the
17 nature of that photograph and their joint presence at
18 this pool party for the defendant's friend, which he
19 admitted it was, is all the evidence the government
20 offers.

21 THE COURT: Okay. Mr. Hetznecker, how would
22 you like to proceed?

23 MR. HETZNECKER: At this point, I would like
24 to cross-examine the officer.

25 THE COURT: Okay. Mr. Bergmann, would you

1 want to take the stand?

2 KENNETH BERGMANN, Defendant's Witness, Sworn.

3 COURTROOM DEPUTY: Please state your name.

4 THE WITNESS: Kenneth Bergmann, United States
5 Probation Officer for the Eastern District of
6 Pennsylvania. Good morning, Your Honor.

7 THE COURT: Okay. Good morning. Please be
8 seated, Mr. Bergmann, and let's proceed with
9 cross-examination. We will deem the proffer by Ms.
10 Fisk as your direct examination.

11 MR. HETZNECKER: Thank you.

12 CROSS-EXAMINATION

13 BY MR. HETZNECKER:

14 Q Good morning, Mr. Bergmann.

15 A Good morning.

16 Q Mr. Bergmann, that proffer just offered by Ms. Fisk
17 regarding the conversation you had with my client was
18 what date?

19 A I would have to look at my notes, I don't have my
20 notes in front of me. I believe it was March of this
21 year.

22 Q March of this year.

23 THE COURT: Ms. Fisk, would you make the
24 notes available to Mr. Bergmann, please?

25 MS. FISK: Certainly.

Mr. Bergmann - Cross

18

1 (Pause in proceedings.)

2 THE WITNESS: I'm sorry, what part were you -
3 asking about?

4 BY MR. BERGMANN:

5 Q The last part of the proffer, which there was some
6 questions about the photograph. That conversation with
7 my client occurred on what date?

8 A March 9th, 2010.

9 Q Was that his regular visit?

10 A It was a scheduled office visit, yes.

11 Q All right. The previous scheduled office visit was
12 what date, February 23rd?

13 A Yes.

14 Q All right. Was that a regular office visit, or was
15 that a special office visit on the 23rd?

16 A I don't understand what you mean by special.

17 Q Well, let me ask, how often does he report, is he
18 supposed to report to you?

19 A It all depends. He doesn't have any schedule.

20 We'll setup dates, whether it's once or month, or if
21 there's a question I need to ask him, I may call the
22 individual in more often, or I may go see him in the
23 field and tell him not to come into the office.

24 Q Just so we are clear about it, you see him face to
25 face approximately once a month, is that correct?

Mr. Bergmann - Cross

19

1 A Approximately. If there's issues, maybe more
2 often.

3 Q All right. You knew that he was volunteering at
4 New Pathways, or was working at New Pathways for Women?

5 A Yes.

6 Q You're aware of that. Are you also aware that he
7 was going to volunteer at that same organization, as
8 well, you're aware of that?

9 A Yes.

10 Q All right. So, he was both employed and also was
11 going to volunteer at that location, correct?

12 A Yes.

13 Q Did you make any inquiries regarding his work,
14 either on February 23rd or on March 9th?

15 A Not that I recall, no.

16 Q So, the focus was solely on the photograph on March
17 9th, the focus of your conversation and visit, and
18 previously on the 23rd was on the BMW, is that correct?

19 A The focus was on the BMW?

20 Q Yes, on February 23rd.

21 A I wouldn't say the focus was -- the focus of that
22 interview was on the BMW?

23 Q Yes, that's my question.

24 A It turned into that. I asked him, but I wouldn't
25 consider that to be the focus of that office visit.

Mr. Bergmann - Cross

20

1 Q All right. So, it was a general conversation,
2 inquiry as to what he was doing and how things were
3 going?

4 A Correct.

5 Q All right. Your testimony is that at some point,
6 you discovered that he had a BMW key on him, is that
7 right?

8 A Correct.

9 Q Did he tell you at any point that, in fact, the BMW
10 was in the possession of his mother?

11 A Yes.

12 Q So, he did give you that information?

13 A Yes.

14 Q Did he put the BMW on his statement, his monthly
15 statement, as a car that he would drive from time to
16 time?

17 A I would have to -- not prior to that.

18 Q Well, I would like you to check. At any time, did
19 he inform the Probation Department that, in fact, he
20 was using the BMW that was in the name of his mother?

21 A I'm sorry, yes, that day.

22 Q That day. Okay.

23 A That day. He wrote it in as we were sitting there.

24 Q All right.

25 A But, did not provide me the tag number, the VIN

Mr. Bergmann - Cross

21

1 number, the mileage.

2 Q All right.

3 A That's when he was asked to, you know, provide me
4 that information.

5 Q On a future date?

6 A No, he said the car, he would go downstairs and get
7 me that information.

8 Q All right. He didn't provide that information to
9 you?

10 A No.

11 Q All right. Now, prior to that time, had he filed a
12 complaint against you?

13 A Has he filed a complaint against me?

14 Q Prior to February 23rd, did he file a complaint
15 against you?

16 A Yes, with my supervisor.

17 Q All right. What date was the complaint filed?

18 A I actually have that information over there, as
19 well. It was prior to that date, I don't have the
20 specific date. According to this, December 15th, 2009.

21 Q All right. So, just so we're clear about it, the
22 conversation that you had with him on August 26th
23 regarding the phone calls that were tape recorded from
24 the prison with him and Aaron Jones, that conversation
25 took place on August 26th, correct?

Mr. Bergmann - Cross

22

1 A With --

2 Q If you look at the front of your violation listing,
3 I believe it says -- I apologize, if you look at the
4 body of it, under C, the second paragraph.

5 A Yes.

6 Q "On August 26th, 2009 --

7 A That's the admitted violation.

8 Q -- this officer" --

9 A Under the admitted violation?

10 Q Yes. You look at that date.

11 A "On August 26th, this officer informed Mr.
12 Williams."

13 Q That you knew of the recorded conversations between
14 him and Aaron Jones?

15 A Yes.

16 Q All right. He conceded that, correct?

17 A Correct.

18 Q All right. You informed him that at that point,
19 you did not think he should have any conversations with
20 Aaron Jones any longer, is that correct?

21 A As it says in the petition, "A verbal warning was
22 given to Mr. Williams, informing him that he is not to
23 have any further contact with known felons."

24 Q Right. But, specifically the conversation with
25 Aaron Jones -- was about Aaron Jones, right?

Mr. Bergmann - Cross

23

1 A They were the tapes that I had, but he was
2 instructed not to have any contact with any known
3 felons.

4 Q All right. Just so we're clear, though, the
5 conversation was focused on Aaron Jones on that date?

6 MS. FISK: Objection, Your Honor, it's asked
7 and answered.

8 THE COURT: Okay. Overruled. If he can
9 answer it.

10 THE WITNESS: We were speaking of Mr. Jones
11 at that time.

12 BY MR. HETZNECKER:

13 Q All right. You had no information that, in fact,
14 he's had any conversation with Aaron since August 26th,
15 2009?

16 A No information.

17 Q All right. So, from August until December, he was
18 complying with all of the rules and regulations,
19 correct?

20 A From -- well, as far --

21 Q As far as you knew at that point.

22 A As far as I knew at that point, yes.

23 Q Yes. As far as you knew at that point, you were
24 still seeing him on a monthly basis, is that correct?

25 A Yes, I would say so, yes.

Mr. Bergmann - Cross

24

1 Q All right. Isn't it true that as a probation
2 officer, you have to make discretionary calls as to
3 whether or not a particular violation warrants notice
4 to the court?

5 A Yes.

6 Q So, sometimes there's a dirty urine, you don't
7 notify the Court right away?

8 A Right, correct.

9 Q All right. Because, in fact, you try to find a way
10 to resolve that, is that correct?

11 A Correct.

12 Q Isn't it true that as of August 26th, 2009, you had
13 only been his probation officer for a short period of
14 time?

15 A Correct.

16 Q So, he had been on supervised release for five
17 years, or almost five years up until the time that you
18 were assigned, correct?

19 A Since September 1st, 2005.

20 Q All right. So, just so we're clear, when were you
21 assigned it, if we could get the exact date?

22 (Pause in proceedings.)

23 A I would say it looks about June of 2009.

24 Q Okay. So, you had only -- as of August 26th, you
25 had only been his probation officer for approximately

Mr. Bergmann - Cross

25

1 two months, correct?

2 A Correct.

3 Q All right. Other than what you have testified to,
4 he's essentially been in compliance with probation, is
5 that correct?

6 A Correct.

7 Q Now, December 15th, 2009, a complaint is filed
8 against you by Mr. Williams, correct?

9 A Correct.

10 Q That's brought to your attention by your
11 supervisor, is that correct?

12 A Correct.

13 Q Subsequent to that, then you go about requesting
14 the phone records from the state prison system, is that
15 correct?

16 A I'm sorry, repeat that question.

17 Q Subsequent to December 15th, 2009, you then
18 requested the records from the state prison system, is
19 that correct?

20 A Correct.

21 Q All right. What was the nature of the complaint
22 that Mr. Williams had against you?

23 A I'm reading it here. Would you like me to read it?

24 Q You can read it, sure.

25 A "Dear Mr. Marvin Green: We spoke some two weeks

Mr. Bergmann - Cross

26

1 ago about a relationship to Mr. Bergmann. I would like
2 to file a formal complaint against Mr. Bergmann, who I
3 believe is a racist and has violated my rights, God
4 given. Since I was self-employed, he did his best to
5 create a non-existent laws so I couldn't have my own
6 business, 'dump truck,' " that's in quotations.

7 Q All right.

8 A "Wants to harass individuals who are not on parole
9 who were doing business with me. Asked me questions
10 about other people who I don't even know, always
11 threatening me with bogus violations, asked me where my
12 money is at. If I was white, me or others who look
13 like me, would not have these racial profiles. He does
14 this on a regular basis."

15 Q All right. Let me stop you there.

16 A It's not done yet.

17 MS. FISK: Well, I would ask that he finish.

18 BY MR. HETZNECKER:

19 Q Okay. Fine, go ahead.

20 A "Now I'm told I can't do community service for
21 Outreach Program, or I'm going to be violated for not
22 having a job."

23 Q All right. Now, I assume that when you received
24 notice of this, you were offended by it?

25 A No.

Mr. Bergmann - Cross

27

1 Q Not at all?

2 A No.

3 Q You didn't feel insulted at all?

4 A No.

5 Q Have there been other complaints filed against you
6 as a probation officer?

7 A Not that I'm aware of, no.

8 Q All right. So, this was the first time, and it
9 didn't bother you at all?

10 A No.

11 Q Okay. Now, just so we're clear about this, the
12 allegations he makes about your looking for reasons to
13 undermine his business, I assume your contention is
14 that's not true, is that correct?

15 A Yes.

16 Q All right. I assume that you dispute all of those
17 allegations in there, is that correct?

18 A Yes.

19 Q The easiest way to resolve a complaint like this
20 would be for the probation officer to transfer the case
21 to someone else?

22 MS. FISK: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MR. HETZNECKER:

25 Q Now, just so we're clear about this. Following

Mr. Bergmann - Cross

28

1 your receipt of this -- by the way, when did you
2 receive the complaint?

3 A I believe that day Mr. Green made me aware of it.
4 To be honest with you, this is the first time I read it
5 all the way through.

6 Q All right. Did you take any action following that
7 complaint?

8 A Any action? What do you mean?

9 Q Did you begin an investigation of Mr. Williams at
10 that point?

11 A No.

12 Q When did you see Mr. Williams after that complaint
13 was filed, when was the next time you saw him?

14 (Pause in proceedings.)

15 A He reported to the office on January 19th, 2009.

16 Q All right. There was nothing remarkable about that
17 particular visit?

18 A No, nothing.

19 Q All right. Then the following visit would have
20 been what date, February 23rd?

21 A Yes.

22 Q All right.

23 MR. HETZNECKER: I have no further questions,
24 thank you.

25 THE COURT: Okay. Very well.

Mr. Bergmann - Cross

29

1 MS. FISK: May I redirect, Your Honor, on the
2 basis of that cross-examination, which went far outside
3 the initial petition?

4 REDIRECT-EXAMINATION

5 BY MS. FISK:

6 Q Mr. Bergmann, I just want to explore, based on the
7 implications raised on cross-examination, why this
8 information you have has come forward.

9 Your request for the updated prison tapes,
10 did that follow your independent receipt from other
11 unrelated law enforcement of some evidence having to do
12 with these violations? I'm making specific reference
13 to the colored photographs.

14 A Right. It was in conjunction with. It was really
15 two independent --

16 Q What happened first, what did you get first?

17 A I believe first I received -- I requested an
18 inquiry about the prison tapes, and I received the
19 pictures first.

20 Q So, you received the pictures first?

21 A Right, I believe so.

22 Q All right. So, you received pictures that showed
23 the person you were supervising, is that correct?

24 A Yes.

25 Q At that time when you received those pictures, you

Mr. Bergmann - Redirect

30

1 had already listened to telephone calls the defendant
2 had had with Aaron Jones from some time before, where
3 he had talked about a party?

4 A Correct.

5 Q Would that be fair?

6 A Correct.

7 Q Would it be fair to say that then when you received
8 those photographs, you believe that they related to
9 that party that you had already heard the defendant
10 speak about?

11 A Correct.

12 Q After you received those pictures from other law
13 enforcement who had seized them, it would be in a car
14 stop, would that be right?

15 A Yes.

16 Q That you then asked for updated phone records to
17 see whether the defendant was continuing his contacts
18 with other felons?

19 A Mr. Jones or any other felon, yes.

20 Q And that is when you learned that, indeed, he was
21 despite the warning he had been given the prior summer?

22 A Correct.

23 Q Then following the receipt of both of those
24 pictures, and those updated phone contacts, you
25 confronted the defendant about them in March, and he

Mr. Bergmann - Redirect

31

1 lied to you and told you that that party was in
2 Philadelphia?

3 A Correct.

4 Q Incidentally, the letter that you just read, the
5 complaint that the defendant made, had to do with your
6 refusing to let him keep a job, so if I can just
7 explore that for a moment.

8 Prior to the defendant's -- the defendant's
9 current job, you were asked about his working at New
10 Pathways?

11 A Correct.

12 Q Are you aware of how many hours a week he is
13 formally employed?

14 A I believe it's twelve hours a week.

15 Q Okay. Have you asked the defendant to obtain full
16 time employment?

17 A We have.

18 Q Does twelve hours a week constitute full time
19 employment?

20 A No.

21 Q Prior to this current position at New Pathways,
22 what employment had the defendant reported to you?

23 A He reported to us that he was operating a dump
24 truck business, a trucking business. He actually had a
25 card that said Williams Trucking.

Mr. Bergmann - Redirect

32

1 Q Did you confirm that the defendant had a dump
2 truck?

3 A Yes, he did have one.

4 Q Did you confirm that the defendant was leasing that
5 dump truck to some other person on a full time basis?

6 A That's what we were attempting to do, and we were
7 asking him about that.

8 Q So, that was your understanding, that he was
9 leasing it on a full time basis so that he wasn't
10 actually doing any daily work with regard to his
11 ownership of the dump truck?

12 A Correct.

13 Q Was it your instruction to the defendant that that
14 did not constitute full time employment?

15 A Correct.

16 Q That appears to be the nature of the complaint that
17 he has in this letter?

18 A Correct.

19 Q All right. Incidentally, with regard to that
20 employment, his current part time employment, and the
21 defendant's other means of support, since he is now
22 only working twelve hours a week, have you inquired of
23 the defendant to provide you with information about how
24 he is maintaining his current lifestyle?

25 A I have asked him questions of that nature, and he's

Mr. Bergmann - Redirect

33

1 indicated to me that, you know, upon his release from
2 prison, he had hit the lottery, and that he was living
3 off of that money, as well, and that he had family
4 support in addition.

5 THE COURT: Now, that was thirty thousand
6 dollars?

7 THE WITNESS: Correct, Your Honor.

8 THE COURT: Okay.

9 BY MS. FISK:

10 Q That was in 2005?

11 A I believe so, yes.

12 Q Have you asked the defendant to provide you with
13 any records or documents showing how much of that
14 thirty thousand dollars remains?

15 A I've asked him where he's kept the money at,
16 because he doesn't indicate it on his monthly reports
17 in any bank accounts.

18 Q Okay.

19 A He's told me, you know, he could be keeping it in a
20 box in his bedroom, or he could be, you know, it could
21 be anywhere, you know, and he hasn't told me where he's
22 keeping the money.

23 Q Thank you, sir.

24 MS. FISK: I have no further questions, Your
25 Honor.

Mr. Bergmann - Redirect

34

1 THE COURT: Any recross?

2 MR. HETZNECKER: Just recross.

3 RECROSS-EXAMINATION

4 BY MR. HETZNECKER:

5 Q He informed you that he filed taxes on that money?

6 A Yes.

7 Q You have no reason to believe that he has not,
8 correct?

9 A No.

10 Q All right. Additionally, you're aware or he
11 informed you that he had a personal injury case?

12 A I don't recall that. I'm not saying that he
13 didn't, but I don't recall.

14 Q But, it was before -- the paperwork, or
15 confirmation of that, was before you were his probation
16 officer if?

17 A It could be. I don't recall it personally.

18 MR. HETZNECKER: I have no further questions,
19 thank you.

20 THE COURT: Mr. Bergmann, you may step down,
21 thank you.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness excused.)

24 THE COURT: Anything further, Ms. Fisk?

25 MS. FISK: No, Your Honor.

1 THE COURT: Okay. Mr. Hetznecker, any
2 evidence that you want to offer?

3 MR. HETZNECKER: Your Honor, may I have a
4 moment?

5 (Pause in proceedings.)

6 MR. HETZNECKER: No, Your Honor, no further
7 evidence.

8 THE COURT: Okay. Very well. So, we would
9 then have argument now?

10 MR. HETZNECKER: Yes, Your Honor.

11 THE COURT: Why don't we have Ms. Fisk go
12 first, and as I understand it, violation A and --

13 MS. FISK: C.

14 THE COURT: -- violation C were admitted.

15 Violation B and violation D are being contested.
16 Violation E, we don't really know, and I have the case
17 here, whether the case of United States versus Maloney
18 affects this.

19 I will give you an opportunity to review it
20 before we go further on violation E. So, let's lay
21 that aside for a minute.

22 MS. FISK: Very well. So, we will not even
23 introduce evidence with regard to that one.

24 THE COURT: Yes, we will not go to E.

25 MS. FISK: Fine, all right.

1 THE COURT: We'll go to B and D.

2 MS. FISK: B and D.

3 THE COURT: Then we'll do mitigation if he is
4 convicted on any of the counts, so let's just focus on
5 whether or not there has been a violation.

6 MS. FISK: Your Honor, the government is of
7 the position that sufficient evidence has been
8 presented with regard to the two contested violations.

9 With regard to B, the defendant was clearly
10 told to provide information about the car. The
11 defendant was told to call later that day. He did not,
12 he still has not.

13 On that day, when this hidden key, and I
14 submit was hidden and the defendant was trying not to
15 disclose it, when it was discovered by Mr. Bergmann in
16 the glove, the defendant at that time added the car to
17 his list, and other than the fact that it's a BMW, has
18 never provided any further information, and has failed
19 to follow the instruction of the probation officer.

20 With regard to D, frankly, Your Honor, the
21 government rests on its evidence, and that is that that
22 is a photograph of people at a party. It appears, and
23 again, it appears to show that these are individuals
24 who know each other, they are standing together,
25 they've got towels draped around their shoulder at a

1 pool party.

2 THE COURT: So, you are relying on the photo?

3 MS. FISK: That's correct, Your Honor. The
4 photograph, and it was uncontested that the man in the
5 pink shirt on the right side of the photograph is
6 Alshana Mews, a federal felon who was on supervised
7 release.

8 THE COURT: How would you demonstrate that
9 the defendant knew that Mr. Mews was a felon? In other
10 words, you could have a picture taken with another
11 person at a party, that sometimes happens --

12 MS. FISK: Yes, sir.

13 THE COURT: -- and then it turns out that
14 that person is a convicted felon, or worse, or better,
15 as the case may be. In other words, how do you connect
16 that out?

17 MS. FISK: Well, frankly, Your Honor, it's
18 the defendant's burden to make sure that he is not
19 associating with known felons. He is on supervised
20 release, he is the person who has to --

21 THE COURT: Well, what's he going to do, ask
22 everybody he meets?

23 MS. FISK: Or ask the person who is throwing
24 the party whether there are going to be any other
25 felons there, and if there are, I can't come. Well,

1 frankly, he wasn't supposed to go, anyway, because it
2 was in Delaware.

3 THE COURT: Well, that's a different problem.

4 MS. FISK: But, beyond that --

5 THE COURT: I don't think a photograph -- we
6 had those gate crashers at the White House, and they
7 had their picture taken with the vice president, and
8 people assume on that kind of setting that people are
9 authorized to be there. I don't know whether you can
10 just simply rely on the picture, in the absence of some
11 prior relationship or connection.

12 MS. FISK: I have no other evidence with
13 regard to that, Your Honor.

14 THE COURT: Okay. Very well. Okay. I don't
15 think I can, just on that basis, find him by the
16 preponderance of the evidence as to D. So, let's go to
17 B.

18 MS. FISK: That's as to D.

19 THE COURT: Yes, exactly.

20 MS. FISK: Yes, sir.

21 THE COURT: B, it seems to me, you know, has
22 he provided the information as we sit here today?

23 MR. HETZNECKER: Well, this is where it gets
24 a little complicated. I have the information today.

25 THE COURT: Right.

1 MR. HETZNECKER: He did not provide the
2 information requested on that date, but I also want
3 to --

4 THE COURT: On that day, or since that day
5 until today?

6 MR. HETZNECKER: Well, I have the information
7 today.

8 THE COURT: Yes, but up until --

9 MR. HETZNECKER: But, up until today,
10 correct.

11 THE COURT: Up until today, isn't that a
12 violation?

13 MR. HETZNECKER: Your Honor, technically, it
14 probably is.

15 THE COURT: Right.

16 MR. HETZNECKER: But, the reason why I
17 challenge it is because, as Your Honor knows, I was
18 appointed last week. I spoke to Mr. Williams, I asked
19 him to get the information. He has the information
20 now, so technically speaking, on that day, up until I
21 was appointed, up until today, it is a violation,
22 technically.

23 But, I think to characterize it, the way it's
24 been characterized, I think is a little disingenuous.
25 Number one, if he was going to conceal the use of the

1 car, he wouldn't show up.

2 He would take the subway or get somebody to
3 drop him off. He wouldn't show up at probation with a
4 key that, of course, is going to go off in the metal
5 detector, it's metal. He can't conceal it in a pocket,
6 in a glove. I mean, the whole thing is kind of
7 ludicrous.

8 Secondly, he actually reports it that day.
9 He says yeah, I am using the BMW. So, the only
10 question, the narrow issue is did he then provide,
11 based on that information given to Mr. Bergmann, did he
12 provide the subsequent requested information, that is,
13 the license number for the car, and ownership of the
14 car. No, he did not do it, but I have it today.

15 THE COURT: Okay. Open and shut.

16 MR. HETZNECKER: Right, but I have it today.

17 THE COURT: Okay. Well, that may go to
18 mitigation.

19 MR. HETZNECKER: Right.

20 THE COURT: But, it seems to me he was asked
21 for the information. He's on supervised release, he's
22 not a free agent.

23 MR. HETZNECKER: Correct.

24 THE COURT: If he was a free agent, we have a
25 different situation.

1 MR. HETZNECKER: Absolutely.

2 THE COURT: But, the probation officer has a
3 duty to investigate. He asked for information, it
4 wasn't provided, I don't know what else can we say.
5 Now, he has it today, well, congratulations, that may
6 go to a different point, but he didn't provide it when
7 he was supposed to.

8 Let us assume that the information, unlike
9 apparently the innocent explanation that you have,
10 hadn't been so innocent. The probation officer then
11 would have been derelict in his duty if he hadn't
12 investigated.

13 MR. HETZNECKER: Correct.

14 THE COURT: So, that's the purpose of the
15 investigation. It's not to say that the man was
16 violating the law, it's for the probation officer to
17 carry out his duty.

18 The same as with the financial information,
19 if you don't provide financial information, it doesn't
20 mean there's something odd going on, but if you don't
21 provide it, he cannot do his job. So, I think that
22 there isn't much of an explanation there.

23 Now, is there anything else then that you
24 would like to say? It seems to me that as to A, C, and
25 B, the defendant has either admitted or evidence has

1 been proffered, which would indicate by the
2 preponderance of the evidence that he had violated the
3 conditions of supervised release.

4 MR. HETZNECKER: Correct.

5 THE COURT: Okay. I so find. Now, let's
6 proceed then, and I'm going to not consider E.

7 MS. FISK: Your Honor, if I just may note,
8 with regard to E --

9 THE COURT: Yes?

10 MS. FISK: -- Mr. Bergmann has provided me a
11 summary --

12 THE COURT: Right.

13 MS. FISK: -- of the Maloney matter, which
14 noted that as a result of Maloney, as I understand it,
15 the summary is that officers should not charge
16 unreported conduct with law enforcement as a violation
17 of that standard condition, unless the contact involves
18 an arrest or questioning with respect to a criminal
19 offense.

20 THE COURT: Well, I don't know. I got the
21 case here. I'll give Mr. Hetznecker an opportunity to
22 review it. I'll take a short break, and I'm sure he'll
23 give me his view.

24 MS. FISK: Very well, Judge.

25 THE COURT: We'll give you a copy, as well.

1 MS. FISK: Sure, Judge.

2 THE COURT: It's only a couple of pages on
3 that particular issue.

4 MS. FISK: Okay.

5 THE COURT: So, why don't we take a break,
6 and we'll get the benefit of your advice here?

7 MR. HETZNECKER: Thank you, Your Honor.

8 MS. FISK: Thank you, Judge.

9 THE COURT: Okay.

10 (Recess, 10:50 a.m. to 11:08 a.m.)

11 THE COURT: Okay. Please be seated. Okay.

12 Ms. Fisk, what do you think.

13 MS. FISK: Your Honor, I believe that the
14 opinion permits the Court to consider the evidence.
15 According to the Third Circuit under the circumstances
16 of that case where the defendant received a summary
17 citation for peddling without a license, the court
18 noted it was a factual determination that they made
19 that the contract was too insufficient to clearly be
20 questioning by police.

21 In this case, it is very different. In this
22 case the defendant was at a private home where a
23 stabbing took place. The New Castle Police Department
24 came to the location and took statements and questioned
25 every individual at the home about this clear criminal

1 procedure. This is a far more than a licensing
2 provision, far more than a traffic violation when there
3 is an aggravated assault, a stabbing.

4 One of the people who were questioned about
5 that criminal incident was this defendant who told the
6 police, in accordance with the police report that Mr.
7 Bergmann has obtained --

8 MR. HETZNECKER: Objection, objection, it is
9 not in the record.

10 MS. FISK: And I am happy to Mr. Bergmann
11 testify to it then, Judge.

12 THE COURT: Well, okay, the question is --
13 the point, I don't think that's necessary to get there.
14 The question is whether or not the provision in the
15 standard conditions of supervised release which --

16 MS. FISK: Is overly broad.

17 THE COURT: -- required that the person on
18 probation or supervised release report arrest or
19 questioning, whether this is a type of a situation
20 which would trigger that provision.

21 It isn't what the result was, but it's
22 whether or not there is notice that when you are
23 questioned under these circumstances, it would trigger
24 the obligation to report.

25 MS. FISK: The Third Circuit does not say

1 that that condition is in and of itself improperly --

2 THE COURT: Now, what I don't understand
3 here, and maybe you could tell me, this may be the
4 Third Circuit in thinking about it, but whether or
5 not -- the form wasn't modified. In other words, the
6 words are still the same arrest or questioned.

7 Shouldn't this decision have led to a
8 modification of the form that would say questioning of
9 a suspect in a pending criminal investigation, and that
10 would have put him on notice, but he would have had no
11 more notice than Mr. Maloney had in his case.

12 MS. FISK: Well, first of all --

13 THE COURT: It's just that afterwards we can
14 now see that it fell within it. I mean, does that cure
15 the vagueness problem?

16 MS. FISK: Your Honor, I would note first
17 that the defendant's supervised release and the
18 conditions were imposed prior to this opinion.

19 THE COURT: Right.

20 MS. FISK: So that they existed pre-Maloney
21 opinion. The Maloney opinion also does not say that
22 that condition in and of itself is unduly vague. What
23 it says is under the facts of this arguable violation,
24 that contact was too vague.

25 The Court is right, I mean there can be a

1 more specific condition of supervised release that
2 would eliminate this issue. But, with regard to this
3 condition as it is currently written, the Court does
4 not say there cannot be an appropriate violation of a
5 condition prohibiting questioning by police.

6 Under the facts of the Maloney case, they say
7 that was an inadequate kind of contact, but then they
8 set out the kinds of contact that would satisfy that
9 same language.

10 It is the position of the government that in
11 this case, the specific contact that the defendant had,
12 that is specific questioning of him by police about a
13 criminal incident where he was present, constitutes
14 that kind of contact which sufficiently places him on
15 notice.

16 THE COURT: Let me ask you something. Maybe
17 Mr. Bergmann knows, or maybe Mr. Bergmann's supervisor
18 knows it.

19 The thirteen standard conditions adopted by
20 the Court, where did we get those?

21 MR. BERGMANN: Where did we get those, Your
22 Honor?

23 THE COURT: Yes. In other words, if I recall
24 that form, it seems to be a national form?

25 MR. BERGMANN: It is a national form, Your

1 Honor.

2 THE COURT: So, that requires perhaps the
3 Criminal Business Committee of the Judicial Conference
4 to amend the form for that. I guess all you folks can
5 do is try to interpret it as best as you can.

6 Okay. Well, let me hear the defendant's view
7 on that.

8 MS. FISK: I'm sorry, Your Honor.

9 THE COURT: Sure.

10 MS. FISK: I just wanted to point out one
11 additional thing, and that is when the defendant was
12 even in March of this year given the opportunity to
13 correct a failure to report, whether it was unduly
14 vague or not --

15 THE COURT: Yes.

16 MS. FISK: -- when he was asked in March of
17 this year, was that party in Delaware, he continued to
18 insist it was in Philadelphia and still did not report
19 the contact that he had back in 2008.

20 THE COURT: Okay.

21 MR. HETZNECKER: Your Honor, I think you hit
22 the nail on the head on the question of vagueness, and
23 that is subsequent to the decision, was the notion of
24 question -- the rest is clear, but the notion of
25 question then modified such that it puts a supervised

1 release or probationer on notice that, in fact, they
2 are to report it.

3 Ms. Fisk seems to characterize this as if he
4 was a suspect. The stabbing occurred outside the
5 house. He's not even near it. So, if a police officer
6 approaches and says, were you present at the scene, did
7 you see anything, here is my name, and I didn't see
8 anything, is that questioning? Does that fall within
9 the ambit of questioning. Does that then put him on
10 notice?

11 Ever under Ms. Fisk's argument, the facts
12 don't establish that he is on notice. I think the
13 Maloney decision is directly on point, because what the
14 court says very clearly is with the interpretation,
15 "The proximity of the terms arrest and questioned and
16 the condition demonstrates that Maloney's
17 interpretation was not unreasonable under the
18 circumstances," and likewise in this particular case.

19 With no modification post-Maloney, with the
20 vagueness existing throughout prior to Maloney and
21 continuing on through, and as Your Honor says has it
22 been changed since.

23 Now, whether it is a national form or not,
24 the question is whether or not he is on notice, my
25 client is on notice that, in fact, a police officer

1 arrives at the scene and says oh, by the way, an
2 incident occurred. What is your name and did you see
3 anything, here is my name and I didn't see anything,
4 does that then put him on notice to notify under that
5 condition?

6 Under the vague reading, as Maloney points
7 out, the vague interpretation, the obvious broad
8 interpretation based on the vagueness of the
9 phraseology, does that put him on notice that he is
10 required to tell him, no, it does not, and I would ask
11 that Your Honor find him not guilty of that particular
12 violation.

13 THE COURT: Well, it does seem to me that if
14 the Maloney court was concerned with vagueness, nothing
15 has been done about it, other than to try to apply it
16 retroactively, that is, after the event, then we try to
17 figure out whether or not it was reasonable. I don't
18 think that helps the matter along.

19 If the problem is vagueness, then it ought to
20 be made more express by those who have the authority to
21 do so. Maybe I would modestly take it upon myself to
22 suggest to the committee on criminal rules, the
23 Criminal Business Committee of the Judicial Conference,
24 that this matter be addressed one way or the other,
25 because I think we are going to continue to have these

1 areas.

2 So, I am going to sustain the objection to
3 that on the principle that the enforcement of the
4 criminal laws should be clear that the vagueness here
5 has not yet been corrected

6 Although I appreciate that is a different
7 situation than Maloney but, again, it was not in which,
8 as far as we can tell, the defendant himself was a
9 suspect, maybe he was an eyewitness to the case, but I
10 think it's something that should be clarified. So,
11 objection sustained.

12 So, we are left with A, B, and C. So, Ms.
13 Fisk, what should be the appropriate punishment in this
14 case?

15 MS. FISK: Your Honor, I would note and I
16 agree that we are left with A, B, and C. With regard
17 to B, in addition to the evidence that this Court
18 found, I would note that there is additional evidence
19 of the defendant not answering truthfully all inquiries
20 by the probation office, and under the concept of
21 relevant conduct, I would suggest to the Court that
22 there is this additional evidence, that is the
23 defendant denying that the party was in Delaware,
24 refusing to respond to the -- I'm sorry -- in terms of
25 lying, refusing to answer truthfully the question about

1 the location of the party, and in terms of generally
2 just refusing to cooperate with probation, refusing to
3 provide financial information that has been requested,
4 apparently seeking to hide, and then when caught
5 providing information about a vehicle.

6 He said directly to the probation officer,
7 despite being warned not to speak to his co-defendants,
8 co-defendants from a violent criminal organization and
9 other felons, the defendant said to him point blank,
10 these are people I've grown up with, I'm not going to
11 stop.

12 THE COURT: Two things. Number one is, when
13 is the period of supervised release scheduled to
14 expire?

15 MS. FISK: It is scheduled to expire I
16 believe August or September of this year? August 31st
17 of this year, Your Honor, is the natural expiration
18 date.

19 THE COURT: Okay. And what are the
20 sentencing options?

21 MS. FISK: For C violations for this
22 defendant who was in Criminal History Category I, from
23 an A felony violation, the sentencing guidelines are
24 three to nine months with a statutory maximum of five
25 years. The government is requesting a sentence in the

1 middle of that range, not at the higher end, but
2 certainly not the lower end.

3 The defendant continued to lied, and I would
4 note, Your Honor, that as we stand here now, we still
5 have not gotten the information about the BMW, despite
6 Mr. Hetznecker's representations, let's be candid.

7 MR. HETZNECKER: Here it is.

8 THE COURT: Okay. Okay. Let's control
9 yourself, okay.

10 MS. FISK: The defendant's continual
11 behavior, blatant disregard for probation --

12 THE COURT: Now, would this require a
13 reimposition of a period of supervised release.

14 MS. FISK: The government would ask first for
15 a period of approximately six months, about in the
16 middle of that guidelines for the defendant to serve
17 six months to perhaps reinforce in him the requirement
18 that he does have to comply with the terms and the
19 conditions that probation plays. Apparently he doesn't
20 like having an active probation officer.

21 THE COURT: But, what is going to happen at
22 the end of the six months, that is what I am asking?

23 MS. FISK: The government asks that the Court
24 also pose a new two year term of supervised release,
25 following that sentence.

1 THE COURT: And what is the option available
2 to the Court in terms of the length of the new period?
3 Is it limited to two years?

4 MS. FISK: No, Your Honor, it can be up to
5 five years, less any period of imprisonment imposed.

6 THE COURT: So, it would be five years minus
7 if a custodial period is imposed now?

8 MS. FISK: Correct. If the Court opts to
9 impose a period of six months custody, the Court can
10 then impose --

11 THE COURT: Let me ask Mr. Bergmann. Mr.
12 Bergmann, has -- and I will talk to Mr. Hetznecker
13 about it, it doesn't really bode well, but there is no
14 criminal conduct as far as we can tell, but it doesn't
15 bode well.

16 Other than these violations, is there some
17 adjustment that the defendant -- I mean, my concern is
18 really more into the future, because I don't think this
19 really bodes well for the future.

20 What conditions of supervised release would
21 be warranted here, and what is the defendant's
22 adjustment otherwise? Where does he live?

23 MR. BERGMANN: Your Honor, as far as
24 conditions, Your Honor --

25 THE COURT: Where does he live?

1 MR. BERGMANN: Your Honor, he apparently
2 resides with his mother I believe in the Mt. Airy
3 section of Philadelphia.

4 THE COURT: Okay.

5 MR. BERGMANN: A condition that the probation
6 office would request is that a financial reporting
7 condition be imposed, that Mr. Williams be required to
8 report his finances and where his finances are being
9 held at, whether they are in a bank, whether they are
10 being privately held in his residence or what have you.

11 As far as his adjustment, Your Honor, I would
12 speak to the fact that Mr. Williams clearly has told me
13 that he doesn't trust law enforcement.

14 THE COURT: Okay. Well, maybe, you know, he
15 has reason for it. But, he has to comply with the
16 conditions, that is the important thing. Whether he
17 likes it or not, I don't think you can require somebody
18 to like law enforcement.

19 MR. BERGMANN: Correct, Your Honor.

20 THE COURT: So, financial reporting, maintain
21 residence at his mother's house. How about full-time
22 employment?

23 MR. BERGMANN: Your Honor, a condition of
24 supervision is that he work regularly. That is a
25 general condition, that he maintain regular employment.

1 THE COURT: Well, what does that mean?

2 MR. BERGMANN: Again, Your Honor --

3 THE COURT: He works twelve hours a week.

4 MR. BERGMANN: Again, that's why the
5 probation office -- because he did get that job, that's
6 why the probation office didn't charge him with that
7 violation because that is regular employment. He is
8 now working twelve hours a week.

9 You know, Mr. Williams, I believe is an
10 intelligent man, well spoken, and I believe he is able
11 to work more regular employment at a full time job.

12 THE COURT: Well, now the purpose of that
13 condition is to be able to identify the source of
14 support, unless he has independent sources of support
15 that he can identify, otherwise, what is he living on.

16 MR. BERGMANN: Correct, Your Honor.

17 THE COURT: Okay. So, there would be, it
18 seems to me, a requirement that he work at least twenty
19 hours a year, unless he can identify that he has an
20 independent source of support.

21 MR. BERGMANN: That would be correct.

22 THE COURT: Okay. I mean, if somebody is
23 rich, maybe they don't have to work, but if they don't
24 have the money and they are living in a certain
25 lifestyle and they are convicted felons on supervised

1 release, I think you have a duty to investigate the
2 sources of support.

3 Okay. So, the question is whether or not
4 there should be a custodial term. Now, can the period
5 of supervised release be extended without a revocation.
6 You would need to have a revocation and, at least, as I
7 recall, one day or something like that of custodial,
8 right?

9 MR. BERGMANN: Correct, Your Honor.

10 THE COURT: Okay. Mr. Hetznecker. You know
11 my concerns.

12 MR. HETZNECKER: I do.

13 THE COURT: This is not going well.

14 MR. HETZNECKER: I understand.

15 THE COURT: Okay. And it is going to get
16 worse.

17 MR. HETZNECKER: I don't want to do that,
18 Your Honor.

19 THE COURT: -- and Mr. Williams' attitude
20 isn't helpful, but it's his attitude. We are not here
21 to change attitudes, but we are here to seek
22 compliance.

23 I am not interested in a situation of
24 punishing somebody for the sake of punishing him. So,
25 I'm actually interested in creating a system that he

1 can comply with. But, if he doesn't comply with it, he
2 is going to be in trouble.

3 MR. HETZNECKER: Understood, and if I could
4 address just the overall perspective here. I want to
5 make it very clear to the Court, that for almost five
6 years he complied. All of the financial information
7 was provided to previous probation officers.

8 He had a father who passed away. His mother
9 is present in the courtroom by the way. The BMW was
10 issued in her name. That is information that has been
11 provided with another individual. She drives the car
12 primarily. He does use the car, there is no question
13 about that. So, I think that should resolve that.

14 With respect to the finances, when his father
15 died while he was incarcerated, there was money set
16 aside for him. That money was set aside and he has
17 lived off the money.

18 He has also tried to get employment. I have
19 a letter from the City of Philadelphia dated October
20 17th, 2008 stating "Dear Mr. Williams: Congratulations,
21 you have passed the examination for the position of
22 asphalt raker. Your score is ninety-eight, your rank
23 on the eligible list is 7.000."

24 This letter indicates that he has been
25 looking for full-time work on an ongoing basis. This

1 is a difficult economy.

2 THE COURT: Now, has he --

3 MR. HETZNECKER: He is still on the list,

4 Your Honor, for this job.

5 THE COURT: Has he filed income tax returns
6 for the last five years?

7 MR. HETZNECKER: He indicates that he has. I
8 don't have those with me.

9 THE COURT: Okay. We will have to provide
10 those, as well.

11 MR. HETZNECKER: But, apparently they have
12 been provided to probation already. I believe they
13 have already been provided in the past.

14 THE COURT: Okay.

15 MR. HETZNECKER: But, if they don't have
16 copies of them, my client assures that he will get
17 those copies. But, I think it's important to put this
18 in the proper perspective.

19 He has looked for work, and when he couldn't
20 find work, he tried to start his own business, and that
21 was the dump truck business, and I think there has been
22 an implication somehow that he's got funds that are
23 nefarious.

24 He has been complying essentially with
25 probation all the way along. Now, did he know these

1 people twenty years ago that are incarcerated? Yes,
2 they call from time to time and ask for favors, can you
3 do this, can you tell so and so, none of it is
4 criminal.

5 In fact, all the tape recordings that the
6 government has, and not one tape recording was
7 presented --

8 THE COURT: He cannot talk to them. He
9 cannot talk to them.

10 MR. HETZNECKER: Correct, and I am not
11 advocating that he should. I just want to put it in
12 proper perspective.

13 THE COURT: Okay.

14 MR. HETZNECKER: So, if in fact, he did have
15 those conversations, none of them involved criminal
16 activity at all, so he will not talk to them. So, if
17 people had called him and from time to time he said I
18 can't talk to you anymore, he's not going to do that
19 anymore, he understands that. He is going to
20 completely comply with all of the rules and regulations
21 of probation.

22 But, I want to put this in perspective. He's
23 got a letter, "Dear Mr. Bergmann:" dated January 19th,
24 2010, four days before the confrontation he had over
25 the BMW with Mr. Bergmann.

1 "I am providing you with the dates that
2 Derrick Williams volunteered at our offices since
3 Wednesday, December 16th, 2009." This is Y-O-A-CAP,
4 Youth Outreach Adolescent Community Awareness Program.

5 So, here is an individual who is making
6 efforts, is trying to find employment, had found
7 part-time employment in a (inaudible) Colony, is doing
8 volunteer work.

9 He has provided that information to Mr.
10 Bergmann. He indicated to Mr. Bergmann on the day that
11 he asked about it, that the BMW was a car that he wa
12 using. I don't want to denigrate the nature of the
13 violations, they are serious violations, and certainly
14 they could call for incarceration.

15 I am requesting that three months, four
16 months shy of him of walking off his entire supervised
17 release, that Your Honor not incarcerate him, that you
18 give him an opportunity to continue to comply with all
19 of the rules and regulations, rules and regulations
20 that from my understanding he had been in compliance
21 with for four years up until the moment that he has his
22 confrontation with Mr. Bergmann.

23 Now, I am not faulting Mr. Bergmann,
24 obviously he is doing his job. He has violated him
25 based on real violations and we have admitted those

1 violations.

2 The question is what do we do now with Mr.
3 Williams at his age at this point in time when, in
4 fact, it looks like there is some communication or
5 personality conflict between the two of them.

6 THE COURT: Well, I don't know about that.
7 But, there was evidence, a complaint was filed. If
8 every time a person on supervised release filed a
9 complaint to take the probation officer off, that would
10 be taken as evidence that there was a problem, we would
11 be out of business.

12 That is the nature of the beast. As far as I
13 know, there was no disciplinary action taken, and the
14 complaint went away. So, I am not putting too much
15 weight on that.

16 MR. HETZNECKER: Fine. All I am saying is
17 there is obviously a conflict between the two of them.

18 THE COURT: Well, there is no conflict, I
19 don't understand what you mean by conflict. A minute
20 ago, you hadn't yet handed over that information. I
21 tell you that there is a problem, and the problem is
22 is Mr. Williams' attitude. He doesn't want to, he
23 doesn't want to really live up on the supervised
24 release, and as a result of that, friction comes into
25 the system.

1 Until, Mr. Williams, you get on with the
2 program, you are going to run into problems.

3 MR. HETZNECKER: Your Honor, I agree with
4 you. What I would request is that Your Honor not
5 incarcerate him and give him a second chance.

6 THE COURT: Okay. Fine. Let me hear from
7 Mr. Williams.

8 MR. HETZNECKER: Thank you, Your Honor.

9 THE COURT: Let's swear him in. If you want
10 to say something, you don't have to say anything, but
11 if you do now is the time to do it.

12 THE DEFENDANT: I would like to.

13 MR. HETZNECKER: Your Honor, may I have one
14 moment?

15 THE COURT: Why don't you talk to him first
16 and see if he wants to speaks to the Court.

17 MR. HETZNECKER: Yes.

18 (Pause in proceedings.)

19 DERRICK WILLIAMS, Defendant, Sworn.

20 COURTROOM DEPUTY: Please state your name for
21 the record.

22 THE DEFENDANT: Derrick Roger Williams.

23 THE COURT: Mr. Williams, tell me anything
24 that you would like me to consider. I was not your
25 sentencing judge. We have not had any dealings with

1 each other, so I want to give you, you know, every
2 opportunity to, you know, be able to successfully
3 complete your supervised release.

4 THE DEFENDANT: Yes, I appreciate that, Your
5 Honor. First and foremost, I'd like to apologize
6 to you for wasting your time with Mr. Bergmann
7 inferences against me.

8 First of all, I'd like to say that I had --
9 I'd like to say just that I had James Wolf, then I had
10 Mr. Gordon Thomas, and I had Tracy Harris, then I had
11 Gordon Thomas and then I got Mr. Bergmann.

12 Throughout all of these conversations, Your
13 Honor, Your Honor, I had told Mr. Wolf that I talked to
14 Aaron, I talked to people in prison. Then I had
15 Gordon Thomas, told him the same thing, told Tracy
16 Harris, told him the same thing.

17 Got Mr. Gordon Thomas back because he was out
18 on accident, something to do with his shoulder or
19 something, then I get Mr. Bergmann. I talked to Mr.
20 Bergmann. Every time I talked to him, he told me
21 something about talking to the inmates in prison. I
22 put that on my monthly statements every time when I
23 talked to him.

24 He would ask me we're not (indiscernible), do
25 I know convicted felons. He would ask do I know

1 somebody, where he live at. He would tell me I have to
2 meet him on the street corner. So, as a result of all
3 this, Your Honor, it was a type of friction.

4 I understand what you're saying as far as the
5 burden is on me, but I never disobeyed anything Mr.
6 Bergmann told me. Now, he says to you today that I
7 never disclosed my finances.

8 I said Mr. Bergmann, the paper's here that I
9 have in front of me. I told Mr. Bergmann about the
10 thirty thousand dollars, legal daily number, I paid
11 taxes on it.

12 I got a piece of property that my father left
13 me when he passed away, I got twenty-two thousand. I
14 had an accident case, I got eighteen thousand. Mr.
15 Bergmann has all of that, all of that, sir, so I'm
16 really confused how Mr. Bergmann comes to Court today
17 and he tells you --

18 THE COURT: How often do you provide
19 financial information to the probation office? Is
20 there a monthly reporting of some sort?

21 THE DEFENDANT: Well, what happened was, sir,
22 that Mr. Bergmann told me to fill out these financial
23 reports and I filled out the report and I mailed it to
24 him and he told me he received it. But, now he tells
25 you today that he doesn't have his file. So, I'm

1 really lost.

2 I mean, I been seeing Mr. Bergmann for nine
3 months. I've never had a conversation about my
4 finances because (indiscernible) with the finances, and
5 I paid taxes on the finances. I gave my tax reports.

6 But, he comes here today and to me, and you
7 can correct me if I'm wrong, but he's trying to infer
8 something about me doing something wrong, when I
9 provided him finances that I obtained through my
10 father's insurance money, and from me hitting the
11 number, through selling a piece of property, and I had
12 an accident case where I got eighteen thousand dollars.
13 So, I'm really lost, honestly. So, he's saying that I
14 missed, I haven't.

15 I was doing community service without even
16 owing the Court community service. I was doing it on
17 my own, because I talked to Mark Grenaby (ph), his name
18 is, and he told me if I couldn't find a job, to do
19 community service. So then I started doing community
20 service.

21 Then I kept talking to Mr. Bergmann, he tells
22 me well, I got to find a job. So, I said where's the
23 jobs at, tell me where they at. Unemployment is ten
24 percent the last time I seen it. So, add that in, Your
25 Honor, with being a convicted felon, so that's about

1 thirty percent. So, I don't know what Mr. Bergmann
2 wants from me.

3 THE COURT: Where are you looking for work?

4 THE DEFENDANT: Well, I filled out an
5 application for the City for sanitation, for asphalt
6 worker. I filled out an application out for AMTRAK, I
7 filled out an application for CHOP, Children Hospital.

8 Like, for example, they said I'm associating
9 with convicted felons. I have never been seen with
10 them for four and a half years. Now, for example, I
11 had this job, the job that I have now, a convicted
12 felon told me about it.

13 The person with this job here with Asterware
14 (ph), a convicted felon told me they was taking the
15 test, and I was able to take it. So, I don't really
16 understand this convicted felon thing.

17 THE COURT: Okay. Well, how about your
18 co-defendants in the case. Do you have any calls, do
19 you see them on the street?

20 THE DEFENDANT: I'd like to address that.

21 THE COURT: Yes.

22 THE DEFENDANT: Like, for example, again, I
23 talked to Mr. Mews, that was never really an issue, him
24 telling me -- that he's telling me do or die, I can't
25 talk to Aaron Jones. It was never a do or die

1 situation with Gordon Thomas. It was never a do or die
 2 situation with Tracy Adams. It was never a do or die
 3 situation with Gordon Thomas.

4 It became a do or die situation when I got
 5 Mr. Bergmann, and I explained this to Mr. Mark Green.
 6 I told him that he was trying to harass me, saying all
 7 those things. And, again, none of the counselors I had
 8 explained this to me.

9 I been knowing Aaron for like twenty-five
 10 years. He may call me say send fifty dollars, send me
 11 a mazagine with the Eagles, the draft, something like
 12 that. Tyrek on death row, he may call me, send me
 13 fifty dollars for something else. I might help him get
 14 it, organize a fish fry to try to get it.

15 THE COURT: But, you can't talk to your
 16 co-defendants. If they call, your mother is going to
 17 have to say, the Court has ordered him not to talk to
 18 your co-defendants.

19 Now, those may be very generous requests, but
 20 you cannot do that. You cannot talk to somebody who is
 21 on death row, hey, how you doing, or what's going on,
 22 even if it doesn't have anything to do with criminal
 23 activity, because that is prohibited under the
 24 conditions of supervised release.

25 So, I want to give you fair warning that from

1 now on, we are going to look at those very, very
2 carefully. Now, if you meet somebody on the street,
3 you know, but if I guy is in jail, you can't have
4 thirty, forty, you know, conversations with somebody in
5 jail.

6 THE DEFENDANT: I understand what you're
7 saying, sir. But, I'll explain to you that when he
8 told me this, and every time I had a conversation with
9 Mr. Bergmann, I saw where this was going.

10 My mother told me this, that I was going to
11 be in front of a judge. She saw it coming, too,
12 because I filed a complaint, and all of a sudden now he
13 files this about me talking to Aaron.

14 When he told me that I couldn't talk to Aaron
15 and I sensed the situation, Aaron never called me for
16 like fifteen months, so I did comply with that. But,
17 then he retroactively goes back now and says that he
18 gets all these calls. I understand that, and I was
19 wrong for being in Delaware.

20 But, I stopped talking to Aaron Jones. Other
21 people call me, sir, so in order for them to stop
22 calling me, I have to tell them to stop calling me,
23 because they are going to keep calling on the phone.

24 So, I have to push five to tell them, look,
25 I'm having a problem with the probation officer, I get

1 all the (inaudible), please don't call (inaudible),
2 this is the conversation with people who call me from
3 various states of Pennsylvania, because I was also in
4 state prison. So, I understand that part.

5 But, he's saying today to you like I kept
6 talking to people, and kept talking to people and kept
7 talking, and if you look at the calls, the calls
8 ceased, so I was in compliance when he told me, but he
9 doesn't relate that to the Court today.

10 I haven't talked to Aaron Jones in thirteen
11 months, fourteen months, and I tell him to prove that,
12 but they won't.

13 THE COURT: I mean, you had I think it was
14 two hundred and some months in the --

15 THE DEFENDANT: Two hundred and twenty-three
16 months, yes.

17 THE COURT: I mean, that is a long time.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You don't want to go back.

20 THE DEFENDANT: Sir, I've been complying.

21 THE COURT: You have done well.

22 THE DEFENDANT: Yes.

23 THE COURT: I mean for four years, you've
24 done well. So, but you've got to change the attitude a
25 little bit, and don't get in trouble over these kinds

1 of things.

2 So, if you change your attitude, I think
3 there is, you know, I think there is no reason why you
4 can't get a job and, you know, get reactivated, but you
5 are not a free agent.

6 You are going to be watched because of what
7 you did. As a result of that, society wants to keep an
8 eye on you for some period of time to be sure that you
9 are going in the straight.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Thank you. Mr. Fisk, the
12 final word here.

13 MS. FISK: Thank you, Your Honor. With
14 regard to the defendant's explanation that he had to
15 tell people he could no longer continue speaking to
16 them, I would note that with regard to many of the
17 other inmates, there were multiple calls with them from
18 the time that he was told to stop speaking to them
19 through January of this year when the last recorded
20 phone call takes place.

21 THE COURT: How many of those folks from that
22 case are still in jail, how many are out?

23 MR. BERGMANN: Your Honor, two of the
24 individuals who are on the phone list are from his
25 instance offense in addition to Aaron Jones, so three

1 total. There are several inmates that had been
2 released and are already in the community. I don't
3 know the exact numbers, Your Honor.

4 THE COURT: Okay.

5 MS. FISK: There are other state inmates, as
6 well as former co-defendants, but multiple calls and
7 contacts with them from the time he was even told again
8 not to have contact.

9 Mr. Hetznecker told the Court how well the
10 defendant was doing for four years. In fact, he
11 started violating the conditions of supervised release
12 in December of 2007 when the contacts with Aaron Jones
13 are reflected.

14 THE COURT: These was C violations, we've had
15 a whole series of them, yes.

16 MS. FISK: That's correct.

17 THE COURT: Any evidence of criminal
18 activity?

19 MS. FISK: No, Your Honor.

20 THE COURT: Okay.

21 MS. FISK: I would note that Mr. Bergmann has
22 shown me a note from July of 2009 when Mr. Bergmann
23 sent the defendant to the part of probation that deals
24 with helping probationers get jobs.

25 Though the defendant stands before you today

1 and tells you today that he has been trying to get a
2 job, on July 1st, 2009, the defendant is quoted as
3 telling not Mr. Bergmann, but the individual in the
4 employment assistance interview office, "I don't have
5 to work as long as I have enough money coming in from
6 this leasing," referring to the dump trunk.

7 So, the versions that are coming are whatever
8 is convenient, I would submit to the Court and not
9 entirely credible, particularly given the fact that the
10 defendant has lied directly to Mr. Bergmann about other
11 questions asked in the course of --

12 THE COURT: Let me ask you this. Let's
13 assume that you ran a business of some sort, for
14 example, a truck. Let's take a specific example. You
15 have a truck and you lease out the truck, you know, a
16 completely legal proposition and you get income from
17 that truck --

18 MS. FISK: Yes.

19 THE COURT: -- and you don't want to work, is
20 that a violation of supervised release?

21 MS. FISK: Well, I think one of the purposes
22 of supervised release and the requirement that you
23 work, is to prevent you from having time to do things
24 that are inappropriate.

25 THE COURT: So, it's not necessarily to

1 support yourself? In other words, you know, a wealthy
2 person --

3 MS. FISK: There are two purposes, certainly.

4 THE COURT: -- you would require him to work
5 not to support himself or herself, but just simply to
6 kind of like keep him busy?

7 MS. FISK: Well, to prevent you from having
8 too much time to hang out. He used to be hanging out
9 on the street corner.

10 THE COURT: Well, then the idea is that in
11 lieu of work, if work is not available, then he should
12 be required to perform community service?

13 MS. FISK: That's correct. And the
14 government would ask that any condition of supervised
15 release include that he maintain full time employment
16 or perform community service when not working full
17 time. I would note that the government --

18 THE COURT: If he does not have that. That
19 makes sense.

20 MS. FISK: The government has not sought a
21 violation on the defendant's work because despite his
22 only having twelve hours a week of paid employment, he
23 has --

24 THE COURT: Okay.

25 MS. FISK: -- been providing service.

1 THE COURT: Okay. My proposed sentence would
2 be this. The purpose of supervised release -- and
3 there comes a time where there are defendants that just
4 cannot stay in supervised release, and there comes a
5 time where the cost of supervision exceeds any progress
6 that can be made as a result of that.

7 However, we have to keep in mind the nature
8 of the offense that underlies your conviction, which is
9 an extremely serious offense. Although under different
10 circumstances we would say hey, look, enough is enough,
11 particularly when you are close to your five years. I
12 don't think we are there yet, because I don't think,
13 Mr. Williams, you have yet come to the realization that
14 you've got to obey these restrictions and these
15 regulations.

16 On the other hand, I don't think we would
17 achieve much by putting you in jail for, you know, a
18 few weeks or a few months, that is not going to do
19 anything.

20 What we're going to do is to set up a program
21 and you are going to be on notice of what the rules and
22 regulations are, and the keys to the jail are going to
23 be, you know, in your pocket.

24 So, I will revoke supervised release. I will
25 order you to serve one day in custody, and you will

1 report to the marshal's office here in this building
2 and will stay for a period of not less than twenty-four
3 hours.

4 I will extend supervised release by three
5 years. During the time of supervised release, you will
6 comply with all of the standard conditions that have
7 been set up by this Court, but you will also comply
8 with the following special conditions.

9 You will maintain residence at your mother's
10 house unless a change of residence if approved by the
11 probation office. You will provide monthly statements
12 of your financial status, and if you have not provided
13 income tax returns, you will make copies available. I
14 understand you may have already provided that. But, I
15 want monthly financial reports from you.

16 You will maintain regular employment. By
17 that I mean either twenty hours of work, or an
18 equivalent number of hours of community service. You
19 wil not speak to any of the defendants in the
20 underlying case, whether they are in jail or not in
21 jail.

22 That is a specific special condition, because
23 as a general condition that you don't associate with
24 convicted felons, but here because you may know these
25 folks from before, and regardless of whether or not

1 criminal activity is afoot, it's just a general
2 prohibition that you have to abide by in this case.

3 So, I think that this is a fair way of saying
4 these are the rules, they have to be abided by. Mr.
5 Bergmann is trying to do his job. He is not a perfect
6 human being, but he is trying to do his job as far as I
7 can tell as best as he can.

8 You are on supervised release. It is not a
9 pleasant thing to do, but you have got to get on with
10 the program. So, I think that when we get as in this
11 case a bunch of C violations, it means friction more
12 than anything else, but it gives you almost a warning
13 sign that things are not working out well.

14 I think you are getting a warning sign here
15 today. The one day should be served as soon as it can
16 be worked out at the direction of the probation office,
17 and it is so ordered.

18 Mr. Williams, you have a right to appeal my
19 sentence today. If you wish to appeal the sentence,
20 you have to file a notice of appeal within ten days
21 from the date that I enter the order revoking your
22 supervised release.

23 You have a right to be represented by a
24 lawyer on the appeal. If you cannot afford the
25 services of a lawyer on the appeal, one will be

1 appointed to represent you. Anything further today?

2 MR. HETZNECKER: No, Your Honor.

3 MS. FISK: No, Your Honor.

4 THE COURT: Very well.

5 ALL: Thank you, Your Honor.

6 (Proceedings adjourned, 11:47 p.m.)

7 * * *

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6 CERTIFICATION
7

8 I, Jeff Nathanson, do hereby certify that the
9 foregoing is a true and correct transcript from the
10 electronic sound recordings of the proceedings in the
11 above-captioned matter.

12

13

14

6-15-10

15 Date


Jeff Nathanson

16

17

18

19

20

21

22

23

24

25